

108TH CONGRESS  
1ST SESSION

# H. R. 3511

To amend the Communications Act of 1934 to require vendors of multichannel services to protect the privacy of their customers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2003

Mr. MARKEY introduced the following bill; which was referred to the  
Committee on Energy and Commerce

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## A BILL

To amend the Communications Act of 1934 to require vendors of multichannel services to protect the privacy of their customers, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Video Programming  
5       Consumer Privacy Protection Act of 2003”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8               (1) The personal privacy of Americans in the  
9       digital age is of increasing concern to consumers and

1 public policy must strive to keep up with changes in  
2 technology.

3 (2) The cable television industry has long pro-  
4 vided video programming to millions of consumers  
5 over cable systems capable of collecting personal in-  
6 formation about a subscriber's viewing habits.

7 (3) Congress recognized the growing threat to  
8 personal privacy posed by the emerging cable sys-  
9 tem-based technology and in 1984 enacted privacy  
10 protections contained in section 631 of the Commu-  
11 nications Act of 1934 (47 U.S.C. 551), to safeguard  
12 the personal privacy of American consumers when  
13 they utilize any service over a cable system.

14 (4) Under these rules, cable television operators  
15 utilizing their cable facilities to offer television pro-  
16 gramming, pay-per-view services, or telecommuni-  
17 cations services, such as broadband access to the  
18 Internet, must protect the personal privacy of sub-  
19 scribers and are prohibited from disclosing personal  
20 data without the prior written or electronic consent  
21 of subscribers.

22 (5) In addition, the Video Privacy Protection  
23 Act (18 U.S.C. 2710) prohibits a video rental or  
24 sales outlet from disclosing personal information re-  
25 garding what video tapes a consumer rents or buys

1 without the informed, written consent of the con-  
2 sumer.

3 (6) Since these personal privacy protections  
4 were enacted by Congress, other technology has ar-  
5 rived that provides services to consumers that are  
6 similar to those provided by cable operators and  
7 video rental outlets.

8 (7) For example, direct broadcast satellite pro-  
9 viders (“DBS providers”), such as DirecTV and  
10 Echostar, now boast 20 million subscribers nation-  
11 wide and these satellite-based services compete with  
12 cable operators on the array of services that cable  
13 operators typically offer.

14 (8) In addition, over 1 million consumers now  
15 subscribe to fast-growing digital video recording  
16 services, such as those provided by companies such  
17 as Tivo and Replay TV, which, like cable operators  
18 and DBS providers, possess the ability to gather in-  
19 formation from consumers about a consumer’s use  
20 of the system, including an individual consumer’s  
21 television viewing habits.

22 (9) While DBS providers and providers of dig-  
23 ital video recording services offer consumers services  
24 similar to those offered by cable operators over cable  
25 systems, competitors utilizing these technologies do

1 not currently have to comply with the privacy pro-  
 2 tections in section 631 because such provisions apply  
 3 only to cable operators.

4 (10) Consistent with the policy endorsed by  
 5 Congress in enacting the Telecommunications Act of  
 6 1996 of regulating entities based upon the service  
 7 which is provided rather than the technology used to  
 8 deliver that service, the public interest compels that  
 9 privacy protections for consumers should be consist-  
 10 ently applied irrespective of who the provider is, or  
 11 what technology they employ to deliver services to  
 12 consumers.

13 (11) While DBS providers and providers of dig-  
 14 ital video recording services have not announced  
 15 plans to or record the personal viewing habits or  
 16 gather other personal data from a consumer's use of  
 17 their services, the public interest would be served by  
 18 requiring comparable privacy protections for Amer-  
 19 ican consumers.

20 **SEC. 3. PRIVACY REQUIREMENTS.**

21 Title VII of the Communications Act of 1934 is  
 22 amended by adding at the end the following new section:

23 **“SEC. 715. PRIVACY REQUIREMENTS FOR VENDORS OF**  
 24 **MULTICHANNEL SERVICES.**

25 “(a) DEFINITIONS.—For purposes of this section:

1           “(1) MULTICHANNEL SERVICES VENDOR.—The  
2       term ‘multichannel services vendor’ means—

3           “(A) a multichannel video programming  
4       distributor, as such term is defined in section  
5       602; and

6           “(B) a person that has access to informa-  
7       tion concerning the video programming that a  
8       customer views, displays, or records through the  
9       provision of video programming, recording serv-  
10      ices, navigation devices, software, or program-  
11      ming guides, interactive communications equip-  
12      ment, or other equipment used by consumers to  
13      access multichannel video programming or  
14      other services offered over multichannel service  
15      systems or the Internet;

16      except that such term does not include a cable oper-  
17      ator to the extent that the cable operator is subject  
18      to section 631.

19           “(2) MULTICHANNEL SERVICES.—The term  
20      ‘multichannel services’ means a video programming  
21      service or other service provided to consumers, in-  
22      cluding services that enable consumers to navigate,  
23      record, or replay video services, except that such  
24      term does not include cable service to the extent that

1 the cable operator providing such service is subject  
2 to section 631.

3 “(3) PERSONALLY IDENTIFIABLE INFORMA-  
4 TION.—The term ‘personally identifiable informa-  
5 tion’ does not include any record of aggregate data  
6 which does not identify particular persons.

7 “(4) OTHER SERVICE.—The term ‘other serv-  
8 ice’ includes any wire or radio communications serv-  
9 ice provided using any of the facilities of a multi-  
10 channel services vendor that are used in the provi-  
11 sion of multichannel services.

12 “(b) NOTICE OBLIGATION.—At the time of entering  
13 into an agreement to provide any multichannel service or  
14 other service to a subscriber and at least once a year  
15 thereafter, a multichannel service vendor shall provide no-  
16 tice in the form of a separate, written statement to such  
17 subscriber which clearly and conspicuously informs the  
18 subscriber of—

19 “(A) the nature of personally identifiable infor-  
20 mation collected or to be collected with respect to  
21 the subscriber and the nature of the use of such in-  
22 formation;

23 “(B) the nature, frequency, and purpose of any  
24 disclosure which may be made of such information,

1 including an identification of the types of persons to  
2 whom the disclosure may be made;

3 “(C) the period during which such information  
4 will be maintained by the multichannel service ven-  
5 dor;

6 “(D) the times and place at which the sub-  
7 scriber may have access to such information in ac-  
8 cordance with subsection (e); and

9 “(E) the limitations provided by this section  
10 with respect to the collection and disclosure of infor-  
11 mation by a multichannel service vendor and the  
12 right of the subscriber under subsections (g) and (i)  
13 to enforce such limitations.

14 In the case of subscribers who have entered into such an  
15 agreement before the effective date of this section, such  
16 notice shall be provided within 180 days of such date and  
17 at least once a year thereafter.

18 “(c) RESTRICTIONS ON USE.—

19 “(1) USE PROHIBITED WITHOUT CONSENT.—  
20 Except as provided in paragraph (2), a multichannel  
21 service vendor shall not use its provision of multi-  
22 channel services to collect personally identifiable in-  
23 formation concerning any subscriber without the  
24 prior written or electronic consent of the subscriber  
25 concerned.

1           “(2) EXCEPTIONS.—A multichannel service ven-  
2           dor may use its provision of multichannel services to  
3           collect such information in order to—

4                   “(A) obtain information necessary to  
5           render a multichannel service or other service  
6           provided by the multichannel service vendor to  
7           the subscriber; or

8                   “(B) detect unauthorized reception of mul-  
9           tichannel service.

10          “(d) RESTRICTIONS ON DISCLOSURE.—

11               “(1) DISCLOSURE PROHIBITED WITHOUT CON-  
12          SENT.—Except as provided in paragraph (2), a mul-  
13          tichannel service vendor shall not disclose personally  
14          identifiable information concerning any subscriber  
15          without the prior written or electronic consent of the  
16          subscriber concerned and shall take such actions as  
17          are necessary to prevent unauthorized access to such  
18          information by a person other than the subscriber or  
19          multichannel service vendor.

20               “(2) EXCEPTIONS.—A multichannel service ven-  
21          dor may disclose such information if the disclosure  
22          is—

23                   “(A) necessary to render, or conduct a le-  
24          gitimate business activity related to, a multi-



1 channel service or other service provided by the  
2 multichannel service vendor to the subscriber;

3 “(B) subject to subsection (i), made pursu-  
4 ant to a court order authorizing such disclo-  
5 sure, if the subscriber is notified of such order  
6 by the person to whom the order is directed;

7 “(C) a disclosure of the names and ad-  
8 dresses of subscribers to any multichannel serv-  
9 ice or other service, if—

10 “(i) the multichannel service vendor  
11 has provided the subscriber the oppor-  
12 tunity to prohibit or limit such disclosure;  
13 and

14 “(ii) the disclosure does not reveal, di-  
15 rectly or indirectly, the—

16 “(I) extent of any viewing or  
17 other use by the subscriber of a multi-  
18 channel services or other service pro-  
19 vided by the multichannel service ven-  
20 dor; or

21 “(II) the nature of any trans-  
22 action made by the subscriber of the  
23 multichannel service vendor; or

24 “(D) to a government entity as authorized  
25 under chapter 119, 121, or 206 of title 18,

1 United States Code, except that such disclosure  
2 shall not include records revealing multichannel  
3 service subscriber selection of video program-  
4 ming from a multichannel service vendor.

5 “(e) ACCESS BY SUBSCRIBER TO INFORMATION.—A  
6 multichannel service subscriber shall be provided access to  
7 all personally identifiable information regarding that sub-  
8 scriber which is collected and maintained by a multi-  
9 channel service vendor. Such information shall be made  
10 available to the subscriber at reasonable times and at a  
11 convenient place designated by such multichannel service  
12 vendor. A multichannel service subscriber shall be pro-  
13 vided reasonable opportunity to correct any error in such  
14 information.

15 “(f) DESTRUCTION OF INFORMATION.—A multi-  
16 channel service vendor shall destroy personally identifiable  
17 information if the information is no longer necessary for  
18 the purpose for which it was collected and there are no  
19 pending requests or orders for access to such information  
20 under subsection (e) or pursuant to a court order.

21 “(g) REMEDIES.—

22 “(1) CIVIL ACTIONS.—Any person aggrieved by  
23 any act of a multichannel service vendor in violation  
24 of this section may bring a civil action in a United  
25 States district court.

1           “(2) ACTUAL AND PUNITIVE DAMAGES; FEES  
2       AND COSTS.—The court may award—

3           “(A) actual damages but not less than liq-  
4       uidated damages computed at the rate of \$100  
5       a day for each day of violation or \$1,000,  
6       whichever is higher;

7           “(B) punitive damages; and

8           “(C) reasonable attorneys’ fees and other  
9       litigation costs reasonably incurred.

10          “(3) REMEDIES NOT EXCLUSIVE.—The remedy  
11       provided by this section shall be in addition to any  
12       other lawful remedy available to a multichannel serv-  
13       ice subscriber.

14          “(h) PRESERVATION OF STATE AUTHORITY.—Noth-  
15       ing in this title shall be construed to prohibit any State  
16       from enacting or enforcing laws consistent with this sec-  
17       tion for the protection of subscriber privacy.

18          “(i) BASIS FOR COURT ORDERS.—Except as provided  
19       in subsection (d)(2)(D), a governmental entity may obtain  
20       personally identifiable information concerning a multi-  
21       channel service subscriber pursuant to a court order only  
22       if, in the court proceeding relevant to such court order—

23           “(1) such entity offers clear and convincing evi-  
24       dence that the subject of the information is reason-  
25       ably suspected of engaging in criminal activity and

1       that the information sought would be material evi-  
2       dence in the case; and

3               “(2) the subject of the information is afforded  
4       the opportunity to appear and contest such entity’s  
5       claim.”.

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